

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

THURSDAY, JUNE 21, 2007

The Council of the City of San José convened in Special Session at 6:09 p.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Council Member Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

The Council of the City of San José convened in Special Session for the purpose of:

- (1) Reviewing and discussing recommendations and key issues contained in various reports relating to the San José Police Department and the Independent Police Auditor's 2006 Report.
- (2) Considering recommendations from the City Manager, Police Department, Independent Police Auditor and/or the Human Rights Commission about what is working, what is not working and what can be improved.
- (3) Receiving a presentation on police oversight models and national trends.
- (4) Obtaining public input.

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Cortese and Council Members Nguyen and Constant, dated June 18, 2007, recommending twenty one points for approval, as described in "Action". (2) Information memorandum from Mayor Reed, Vice Mayor Cortese, Council Members Nguyen, Constant and Liccardo, dated August 21, 2007, providing written documentation of Council Direction. (3) Memorandum from Independent Police Auditor Barbara Attard, dated June 8, 2007, transmitting the IPA 2006 Year End Report. (4) Memorandum from IPA Attard, dated June 18, 2007, transmitting the Supplemental IPA Report, Summary of Testimony of Consultant. (5) Memorandum from IPA Attard, dated June 18, 2007, transmitting the Supplemental IPA Response to the Administration's Response to Police Related Repots and Macias Documents. (6) Memorandum from IPA Attard, dated June 18, 2007, transmitting the Supplemental report on Summary Report of Forums. (7) Memorandum from Lawrence Boesch, Human Rights Commission, dated June 6, 2007, regarding the Human Rights Commission's supplemental recommendations for the various Police Related reports. (8) Sixty eight emails from the public, dated June 18, 2007, in support of the IPA recommendations.

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Mayor Reed presented opening remarks and described the events for the evening.

Independent Police Auditor Barbara Attard presented the Independent Police Auditor 2006 Year End Report.

Vice Mayor Cortese arrived at 6:17 p.m. and Council Member Liccardo arrived at 6:27 p.m.

City Manager Les White provided brief opening comments regarding the Independent Police Auditor's 2006 Year End Report. Deputy City Manager Deanna Santana provided the Administration's response to the Independent Police Auditor's 2006 Year End Report. Consultant Denise Callahan, Macias Consulting Group, summarized the analysis of the complaint data. Chief of Police Robert Davis presented an overview of the Police Department's response to the Independent Police Auditor's recommendations.

Lawrence Boesch, Human Rights Commission, provided an overview of the Community Forum Reports. Chief of Police Robert Davis responded to the Community Forum Reports and the Human Rights Commission Supplemental Recommendations. Independent Police Auditor Barbara Attard provided additional remarks. Consultant Denise Callahan, Macias Consulting Group, presented the San José Internal Affairs Peer Study Review. Independent Police Auditor Barbara Attard expressed concern that the IPA was not interviewed for this study and that misconduct issues were not placed in the inquiry category.

Consultant for the Independent Police Auditor Richard Jerome presented an assessment of the complaints and on the San José Internal Affairs Peer Study Review by Macias Consulting Group.

Chief of Police Robert Davis summarized the Annual Force Response Report. Independent Police Auditor Barbara Attard presented the IPA's response to the Report. Consultant Richard Jerome also commented on the Report.

Lance Bayer Attorney/Consultant, presented a summary of recent developments in the civilian oversight of law enforcement, police oversight models and trends. Consultant Richard Jerome responded to the reports.

Motion: Council Member Nguyen moved approval of the memorandum she cosigned with Mayor Reed, Vice Mayor Cortese and Council Member Constant, with the amendments as listed in the memorandum. Council Member Constant seconded the motion.

Significant Council discussion and questions to Staff, the Independent Police Auditor and the consultants ensued.

Council Member Chu requested to amend the motion to add taser gun use to the IPA's existing authority to review. The motion failed for lack of a second.

Public Comments:

Speaking in support of the Independent Police Auditor's recommendations and/or a ban on the use of taser guns:

- (1) J.J. Kapp, David Epps, Santa Clara County Public Defender
- (2) Raul Estremera
- (3) John Webster
- (4) David Parker
- (4) Walter Wilson
- (5) Jeff Moore, Rick Callender, NAACP
- (6) Joe Padgett, Ben Cardoza, Community Homeless Alliance Ministry (CHAM)
- (7) Richard Konda, Asian Law Alliance
- (8) Socorro Reyes McCord
- (9) Fred Hirsch
- (10) Noreen Salinas
- (11) Miguel Burciaga
- (12) Donna Wallach
- (13) Linda Vu, San José Silicon Valley Chamber of Commerce
- (14) Darlene Wallach
- (15) Edward Bellezza
- (16) Fred Villasenor
- (17) Sofia Mendoza
- (18) Emmy Rhine
- (19) Kate Kennedy
- (20) Mark Schlosberg
- (21) Sanjeev Bery
- (22) Kate Chapman, ACLU
- (23) Danna Garza, MAPA
- (24) Reverend Jeff Moore
- (25) Don Connors
- (26) Raj Jayadev
- (27) Jose Rangel, Coalition for Justice and Accountability
- (28) Aram James, Nori Herras, TransPowerment
- (29) Terry McCaffrey, Amnesty International
- (30) Michael Chane
- (31) Gina Gates
- (32) Aaron Resendez
- (33) Bob Applebaum
- (34) Susan Johnson
- (35) Betsy Wolf-Graves
- (36) Fariha Naveed
- (37) Cora Tomalinas
- (38) William Garrett
- (39) Karl Hoffower, Citizens Commission on Human Rights
- (40) Pete Franges

Public Comments (Cont'd.)

- (41) Azima Subedar, Council on American Islamic Relations
- (42) Marlo Alvarado Custodio
- (43) Thomas Ferrito
- (44) Yolanda Reynolds
- (45) Alofa Talivaa
- (46) A. Phelps
- (47) Mollie McLeod
- (48) Brenda Otey
- (49) Charisse Domingo
- (50) Gary Johnson
- (51) Stephen Johnson
- (52) Art Calderon
- (53) Linda Young Colar
- (54) Bobby Lopez, San José Police Department
- (55) Al Castellanos
- (56) Wiggys Silvertson.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Cortese and Council Members Nguyen and Constant, dated June 18, 2007, was approved with amendments, as amended: (1) Confirm the Independent Police Auditor's (IPA) right to challenge the Police Department's classification of complaints and inquiries, with ultimate resolution by the City Manager. (2) Direct the Police Chief to establish policies on the types of inquiries that should be made a part of the early warning and intervention counseling system. (3) Direct the Police Chief to develop a specific policy prohibiting retaliation against complainants. (4) Direct the Police Chief to continue to incorporate rudeness awareness training and reinforce the need for respectful treatment into regular training for all officers. (5) Add regular monitoring of major downtown nighttime events, i.e. Cinco de Mayo and Mardi Gras to the work plan of the Human Rights Commission (HRC). (6) Continue use of the mediation process and publicize its availability. (7) Direct the City Manager, Police Chief and the Independent Police Auditor to work together to develop information packets in multiple languages for individuals contacting the IPA or Internal Affairs Unit (IA). (8) Restrict the inclusion of data regarding the dispute of routine traffic citations from reports of complaints and inquiries until the matter is addressed by the traffic report. Complaints that are strictly disputes of the citation should be resolved by the traffic court and eliminated from the reports of complaints and inquiries. (9) Direct the IPA and IA to develop a packet of intake materials to be given to the complainants at both agencies to include complaint definitions, an explaining of the process and necessary forms. (10) Direct the City Manager to work with the IPA and IA to develop a standardized script that explains the inquiry process, which IPA and IA Staff will read at the time of intake. (11) Direct the Police Department to present its rudeness prevention training to the Human Rights Commission. (12) Direct the Independent Police Auditor to add further information, such as whether a complaint was filed, date and city of incident, to data

Action (Cont'd.)

collected at all future public forums regarding the Police Department and to convey this information explicitly in post forum reports. This same information should be included in reports brought forward by the Human Rights Commission. (13) Add review of the Police Department's cultural diversity training to the work plan of the Human Rights Commission. (14) Accept the San José Police Department's self initiated process to reestablish the Citizens' Police Academy and grant priority for participation to Human Rights Commission. (15) Direct the Police Chief to conduct deeper data analysis for an annual use of force report. This analysis should include, but is not limited to, the location of arrest, residence of those arrested and the time of day the arrest occurred. (16) Direct the Police Chief to explore alternate terminology for "Inquires", such as "information request" or "informational query". (17) Require an independent and annual evaluation of key performance measures of the San José Police Department citizen complaint process. (18) Direct the City Manager to accept the Police Department's self initiated practice, as of April 2007, of tracking police officers' names on Inquiries for a six month period, and direct the City Manager to report on the status of this effort once six months of data are available, along with a Staff recourse and "value added" impact report. (19) Confirm the IPA's existing authority to review officer-involved shootings and in-custody death cases. Direct the City Attorney to return to the City Council at the first meeting in August with a report on the litigation impacts of moving all in-custody death cases that are a result of a use of force to the same level of auditing by the IPA as officer-involved shootings. The City Attorney was further directed to analyze the countywide protocol for in-custody deaths, as well as other critical incidents. (20) Direct the City Manager to work with the Police Chief and IPA to develop a revised complaint process that determines classifications based upon objective criteria and definitions for complaint categories. They are to bring regular updates on their progress to the Public Safety, Finance and Strategic Support Committee. This will allow the IPA to be involved as part of the process, work collaboratively and review progress. Final recommendations are to be brought back to the City Council within 6 months. (21) Direct the City Manager to collaborate with the IPA on a report outlining the status of all the recommendations adopted at the Special Council Meeting. This report is to be brought forward in conjunction with the IPA's mid year report. (11-0.)

ADJOURNMENT

The Council of the City of San José was adjourned at 10:28 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk
smd/6-21-07SPECMIN

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